

LEGISLATURE OF NEBRASKA  
NINETY-SIXTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 859**

Introduced by Hartnett, 45

Read first time January 20, 1999

Committee: Government, Military and Veterans Affairs

A BILL

1 FOR AN ACT relating to the Administrative Procedure Act; to amend  
2 sections 84-911, 84-912.01, and 84-912.02, Reissue  
3 Revised Statutes of Nebraska; to provide standing for  
4 political subdivisions as prescribed; and to repeal the  
5 original sections.  
6 Be it enacted by the people of the State of Nebraska,

1                   Section 1.    Section 84-911, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3                   84-911. (1) The validity of any rule or regulation may  
4 be determined upon a petition for a declaratory judgment thereon  
5 addressed to the district court of Lancaster County if it appears  
6 that the rule or regulation or its threatened application  
7 interferes with or impairs or threatens to interfere with or impair  
8 the legal rights or privileges of the petitioner.    Any political  
9 subdivision shall have standing to appear in such an action if the  
10 proposed rule or regulation would have a significant budgetary or  
11 fiscal impact upon the political subdivision. The agency shall be  
12 made a party to the proceeding. The declaratory judgment may be  
13 rendered whether or not the petitioner has first requested the  
14 agency to pass upon the validity of the rule or regulation in  
15 question.

16                  (2) The court shall declare the rule or regulation  
17 invalid if it finds that it violates constitutional provisions,  
18 exceeds the statutory authority of the agency, or was adopted  
19 without compliance with the statutory procedures. For purposes of  
20 this subsection, statutory procedures ~~shall~~ do not include  
21 procedures provided under the Negotiated Rulemaking Act.

22                  Sec. 2.   Section 84-912.01, Reissue Revised Statutes of  
23 Nebraska, is amended to read:

24                  84-912.01.   (1) Any person or political subdivision may  
25 petition an agency for a declaratory order as to the applicability  
26 to specified circumstances of a statute, rule, regulation, or order  
27 within the primary jurisdiction of the agency. An agency shall  
28 issue a declaratory order in response to a petition for that order

1 unless the agency determines that issuance of the order under the  
2 circumstances would be contrary to a rule or regulation adopted in  
3 accordance with subsection (2) of this section. An agency may not  
4 issue a declaratory order that would substantially prejudice the  
5 rights of a person or political subdivision who would be a  
6 necessary party and who does not consent in writing to the  
7 determination of the matter by a declaratory order proceeding.

8 (2) Each agency shall issue rules or regulations that  
9 provide for: (a) The form, contents, and filing of petitions for  
10 declaratory orders; (b) the procedural rights of persons or  
11 political subdivisions in relation to the petitions; (c) the  
12 disposition of the petitions; and (d) notice to necessary parties  
13 for matters set for hearing or specified proceedings. The rules or  
14 regulations shall describe the classes of circumstances in which  
15 the agency will not issue a declaratory order and be consistent  
16 with the public interest and with the general policy of the  
17 Administrative Procedure Act to facilitate and encourage agency  
18 issuance of reliable advice.

19 (3) Persons or political subdivisions who qualify for  
20 intervention and file timely petitions for intervention according  
21 to agency rules and regulations may intervene in proceedings for  
22 declaratory orders.

23 (4) Within thirty days after receipt of a petition for a  
24 declaratory order, an agency shall, in writing:

25 (a) Issue an order or agree to issue a declaratory order  
26 by a specified time declaring the applicability of the statute,  
27 rule, regulation, or order in question to the specified  
28 circumstances;

1 (b) Set the matter for specified proceedings; or

2 (c) Decline to issue a declaratory order, stating the  
3 reasons for its action.

4 (5) A copy of all orders issued in response to a petition  
5 for a declaratory order shall be mailed promptly to the petitioner  
6 and any other parties.

7 (6) A declaratory order shall have the same status and  
8 binding effect as any other order issued in a contested case. A  
9 declaratory order shall contain the names of all parties to the  
10 proceeding on which it is based, the particular facts on which it  
11 is based, and the reasons for its conclusion.

12 (7) If an agency has not issued a declaratory order  
13 within sixty days after receipt of a petition therefor, the  
14 petition shall be deemed to have been denied.

15 Sec. 3. Section 84-912.02, Reissue Revised Statutes of  
16 Nebraska, is amended to read:

17 84-912.02. (1) A hearing officer or designee shall grant  
18 a petition for intervention if:

19 (a) The petition is submitted in writing to the hearing  
20 officer or designee, with copies mailed to all parties named in the  
21 hearing officer's notice of the hearing, at least five days before  
22 the hearing;

23 (b) The petition states facts demonstrating that (i) the  
24 petitioner's legal rights, duties, privileges, immunities, or other  
25 legal interests may be substantially affected by the proceeding,  
26 (ii) the petitioner is a political subdivision and the matter at  
27 issue would have a significant budgetary or fiscal impact on the  
28 political subdivision, or (iii) ~~or that~~ the petitioner qualifies as

1 an intervenor under any provision of law; and

2 (c) The hearing officer or designee determines that the  
3 interests of justice and the orderly and prompt conduct of the  
4 proceedings will not be impaired by allowing the intervention.

5 (2) The hearing officer or designee may grant a petition  
6 for intervention at any time upon determining that the intervention  
7 sought is in the interests of justice and will not impair the  
8 orderly and prompt conduct of the proceedings.

9 (3) If a petitioner qualifies for intervention, the  
10 hearing officer or designee may impose conditions upon the  
11 intervenor's participation in the proceedings, either at the time  
12 that intervention is granted or at any subsequent time. Conditions  
13 may include:

14 (a) Limiting the intervenor's participation to designated  
15 issues in which the intervenor has a particular interest  
16 demonstrated by the petition;

17 (b) Limiting the intervenor's use of discovery,  
18 cross-examination, and other procedures so as to promote the  
19 orderly and prompt conduct of the proceedings; and

20 (c) Requiring two or more intervenors to combine their  
21 presentation of evidence and argument, cross-examination,  
22 discovery, and other participation in the proceedings.

23 (4) The hearing officer or designee, at least twenty-four  
24 hours before the hearing, shall issue an order granting or denying  
25 each pending petition for intervention, specifying any conditions  
26 and briefly stating the reasons for the order. The hearing officer  
27 or designee may modify the order at any time, stating the reasons  
28 for the modification. The hearing officer or designee shall

LB 859

LB 859

1 promptly give notice of an order granting, denying, or modifying  
2 intervention to the petitioner for intervention and to all parties.

3           Sec. 4. Original sections 84-911, 84-912.01, and  
4 84-912.02, Reissue Revised Statutes of Nebraska, are repealed.